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Lynn Shapiro Starr
Vice President
Regulatory Affairs

January 21, 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: **Ex Parte Presentation**
CC Docket 98-147
Deployment of Advanced Telecommunications
Capability

Dear Ms. Salas:

Please include the attached document in the record of this proceeding. If you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynn Starr".

Attachment

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NTIA'S JANUARY 11, 1999 EX PARTE
DOCKET NO. 98-147FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

On January 11, 1999, NTIA strongly supported the thrust of the Commission's proposal in this docket. However, NTIA recommends a different statutory approach to the Commission's structural separation proposal and additional separation requirements and measures to promote local exchange competition. NTIA's different statutory "method" and its "additional" requirements are not new; nor are they consistent with the 1996 Act.

I. STRUCTURAL SEPARATION**A. General Policy Considerations**

- NTIA unfortunately focuses on the "criticisms" from the now familiar polar opposites in this docket. NTIA fails to recognize that Ameritech and NorthPoint have submitted a "win/win" joint proposal. The NorthPoint/Ameritech Joint Proposal should be adopted by the Commission.
- Moreover, NTIA's ex parte, although detailed and thorough, raises no objections to reasonable LATA boundary modifications that are part and parcel of the Ameritech/NorthPoint joint proposal. Again, the Commission should promptly implement that Joint Proposal.

B. The Commission's Separation Proposal.

- Although NTIA supports the Commission's separate affiliate- policy objective, it recommends another statutory method: "service-by-service" forbearance under Section 10(d) of the 1996 Act.
 - Ameritech agrees with NTIA that the Commission has the statutory authority to forbear on a "service-by-service" basis.¹ However, NTIA's reliance on Section 10(d) in connection with the Commission's separation proposal is misplaced. Rather, the Commission's separation proposal must be evaluated under the provisions of Section 251(h).
 - Section 251(h) is the only statutory "method" to determine whether a carrier is an "incumbent" LEC and, therefore subject to the requirements of Section 251(c), is in Section 251(h). As the Commission recognized: "... in order to be deemed an incumbent LEC, a carrier must meet the definition in Section 251(h)." (NPRM at ¶ 89)

¹ The Commission sought comments on NTIA's service-by-service proposal in the NPRM (See ¶ 183). Of the hundreds of parties filing comments in this proceeding, only AT&T commented on NTIA's forbearance proposal. Ameritech strongly disagrees with AT&T's opposition to NTIA's legal interpretation. As NTIA correctly notes, the Commission in the proper case has the statutory authority to forbear pursuant to 10(d) on a "service-by-service" basis.

- Therefore, NTIA's reliance on Section 10(d) is off the mark. The scope of forbearance is not the issue, rather it is whether a separate affiliate should be deemed an incumbent within the meaning of Section 251(h). As the Commission noted: "... we are not proposing to forbear from Section 251(c) requirements. Rather, we are setting forth proposals on the circumstances under which an affiliate is not deemed an incumbent LEC in the first place." (NPRM ¶ 93)

C. Degree Of Separation

Although NTIA generally supports the FCC's separation requirements, it recommends additional "safeguards." Because each of the additional requirements suggested by NTIA has also been raised by the IXC's, Ameritech has already demonstrated in its Reply Comments why such additional burdens are unnecessary and inconsistent with the 1996 Act. Of particular concern:

- **Independent Operation.** NTIA's suggestion that the separate affiliates have "significant, non-majority public ownership" has no statutory or policy justification. Such requirement is more onerous than the provisions of Section 272, and has been rejected by the FCC in Section 271 proceedings.
- **Joint Marketing.** Again, this additional impediment is inconsistent with Section 272 and the incumbent's First Amendment rights. There is no justification to restrict a carrier from engaging in lawful activity.
- **Sharing of Customer Information.** Again, NTIA's proposal is inconsistent with the 1996 Act. Any sharing of information should, of course, be subject to the Act's CPNI requirements – nothing more, nothing less.
- **Affiliate Tariffs.** Once again, NTIA's proposal is inconsistent with well-established Commission precedent of permissive detariffing for the provision of interstate services by carriers other than incumbent LECs. (See, e.g., NPRM ¶ 100, Note 199)

II. ADDITIONAL MEASURES TO PROMOTE LOCAL EXCHANGE COMPEITION.

A. National Standards for Collocation and Loop Availability

NTIA's presumption that any collocation and loop arrangements negotiated or adopted in a state should be made available on a national basis ignores differences and uniqueness which has given rise to the wide diversity of collocation and loop arrangements.

- The Commission should encourage the creative and unique tailoring process as the best method for meeting CLEC needs. However, such new “arrangements” should only be considered upon a reasonable request, and must permit recovery of the costs to make the arrangement available. Otherwise, incumbent LECs will be spending a great deal of time defending unique arrangements utilized elsewhere, that, may or may not, be requested.
- The more reasonable approach is for the Commission to require parity between the separate affiliate and all new CLECs for these operational concerns.

B. National Model for Collocation and Loop Information

NTIA’s recommendations that the ILEC be required to maintain collocation “space lists” and a loop information database would impose a significant and expensive challenge, and given the nature of network information, may as methods for encouraging deployment of advanced services by in reality prove unworkable and hinder progress:

- **“Space Lists”** Collocation “space lists” are by definition a snapshot for space available at a certain time. Individual CLEC space requests are dynamic and unique. Each must be individually negotiated for a CLEC’s unique circumstances. Maintenance of space lists will only add unnecessary costs while not really improving the negotiation process. A requirement for space lists also ignores virtual collocation as an alternative to physical collocation.
- **“Loop Lists”** The creation of a loop information database also suffers from the snapshot problem, added cost and inaccuracy. The decision regarding the need for a loop information database should be made by individual ILECs in response to their own methods for communicating this information.

C. Collocation of Switching Equipment

NTIA’s recommendation regarding switching equipment is inconsistent with the Act. Collocation of switching functionally is not required to access unbundled network elements and will lead to unnecessary collocation space exhaust.

D. Specific Collocation and Loop Availability Requirements

Except as noted above, Ameritech generally agrees with NTIA’s suggestions. See for example, “Joint Statement of Principles applicable in a Separate Subsidiary Environment by Ameritech and North Point.”